# GOOD FAITH IN THE JURISPRUDENCE OF THE WTO pdf

## 1: PDF Download Good Faith In International Law Free

*About Good Faith in the Jurisprudence of the WTO. What does the concept of good faith express? This book is the first to discuss what good faith means in international trade law.*

Settling Disputes - A unique contribution The operation of the WTO dispute settlement process involves the parties and third parties to a case and may also involve the DSB panels, the Appellate Body , the WTO Secretariat, arbitrators, independent experts, and several specialized institutions. It also has the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize the suspension of obligations under the covered agreements. It is not possible for the respondent state to prevent or delay the establishment of a Panel, unless the DSB by consensus decides otherwise. The proceedings are confidential, and even when private parties are directly concerned, they are not permitted to attend or make submissions separate from those of the state in question. In sharp contrast with other systems, the report is required to be adopted at a meeting of the DSB within 60 days of its circulation, unless the DSB by consensus decides not to adopt the report or a party to the dispute gives notice of its intention to appeal. Each appeal is heard by three members of the permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership. Members of the Appellate Body have four-year terms. They must be individuals with recognized standing in the field of law and international trade, not affiliated with any government. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days. The DSU states unequivocally that an Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties, unless the DSB decides by consensus within thirty days of its circulation not to adopt the report. While a full complement consists of seven judges, the Appellate Body can hear an appeal with a minimum of three. Within thirty days of the adoption of the report, the member concerned is to inform the DSB of its intentions in respect of implementation of the recommendations and rulings. If the member explains that it is impracticable to comply immediately with the recommendations and rulings, it is to have a "reasonable period of time" in which to comply. This reasonable amount of time should not exceed 15 months. If there is a disagreement as to the satisfactory nature of the measures adopted by the respondent state to comply with the report, that disagreement is to be decided by a panel, if possible the same panel that heard the original dispute, but apparently without the possibility of appeal from its decision. The DSU provides that even if the respondent asserts that it has complied with the recommendation in a report, and even if the complainant party or the panel accepts that assertion, the DSB is supposed to keep the implementation of the recommendations under surveillance. If a member fails within the "reasonable period" to carry out the recommendations and rulings, it may negotiate with the complaining state for a mutually acceptable compensation. Compensation is not defined, but may be expected to consist of the grant of a concession by the respondent state on a product or service of interest to the complainant state. If the respondent state objects to the level of suspension proposed or to the consistency of the proposed suspension with the DSU principles, still another arbitration is provided for, if possible by the original panel members or by an arbitrator or arbitrators appointed by the Director-General, to be completed within sixty days from expiration of the reasonable period. Formal complaints against least developed countries are discouraged, and if consultations fail, the Director-General and the Chairman of the DSB stand ready to offer their good offices before a formal request for a panel is made. Whether or not a developing country is a party to a particular proceeding, "particular attention" is to be paid to the interests of the developing countries in the course of implementing recommendations and rulings of panels. The aim is to level the playing field for these countries and customs territories in the WTO system by enabling them to have a full understanding of their rights and obligations under the WTO Agreement. Economists Jeffry Frieden and Joel Trachtman found that the United States wins the vast majority of disputes it brings against other countries, winning "more than the average when it is complainant". Other countries lose most of the cases brought against the US, losing "less than the average when it is [the] respondent". Frieden and Trachtman explain that the US would only bring cases to the DSS when their cases are "relatively clearly

justified by the law". They developed a theoretic model to explain the regularity with which incumbent presidential candidates filed trade disputes involving industries in swing states in the year prior to presidential elections.

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## 2: Marion Panizzon (Author of Good Faith in the Jurisprudence of the Wto)

*This book is the first to account for what good faith stands for in international trade law. The book describes how, why, and when the concept of good faith links WTO Agreements with public international law.*

This suggests that both the GATT contracting parties and WTO Members have approached this remedy with caution and, indeed, have treated it as an exceptional instrument of dispute settlement. We note in this regard that both the European Communities and the United States in the EEC â€" Oilseeds case, and the two parties in this case, have confirmed that the non-violation nullification or impairment remedy should be approached with caution and treated as an exceptional concept. The reason for this caution is straightforward. Members negotiate the rules that they agree to follow and only exceptionally would expect to be challenged for actions not in contravention of those rules. The Uruguay Round negotiations provided an important opportunity to review the dispute settlement process under the WTO. In spite of concerns about the inherent unpredictability and the wider discretion for dispute settlement panels, WTO members decided to maintain the NVNI option. It established that a WTO member is under no obligation to withdraw a measure that merely nullifies or impairs benefits where there is no associated violation of a WTO treaty commitment. Article 26 also provides for arbitration on the level of nullification or impairment and sets the benchmark for permissible retaliation. Ultimately the aggrieved has the right to retaliate by suspending its own concessions if a negotiated settlement cannot be reached. This was a U. These measures included various rules regarding foreign investment, and certain restrictive marketing policies. The Panel also addressed the issue of competitive balance and stated that: The ban was enacted as a health measure but Canada argued that its exports of chrysotile asbestos for use in construction was safe according to international standards and that it had obtained tariff concessions on asbestos and asbestos-containing products dating back to as part of the Uruguay Round. Canada could not have reasonably expected that WTO members would not act to ban asbestos products in the future. At the same time the Panel noted that: By creating the right to invoke exceptions in certain circumstances, Members have recognized a priori the possibility that the benefits they derive from certain concessions may eventually be nullified or impaired at some future time for reasons recognized as being of overriding importance. This situation is different from that in which a Member takes a measure of a commercial or economic nature such as, for example, a subsidy or a decision organizing a sector of its economy, from which it expects a purely economic benefit. In this latter case, the measure remains within the field of international trade â€¦. In this case, the United States complained that Korean restrictions on the participation of foreign suppliers with respect to a new airport amounted to non-violation nullification or impairment as it had been misled by Korea as to the scope of its commitments and the entities that would be responsible for procurement in the airport project. The Panel ruled that such a claim was possible in principle but ruled that the United States had failed to prove its non-violation claim as it had constructive knowledge through written notice of the Korean legislation. As noted above, the basic premise is that Members should not take actions, even those consistent with the letter of the treaty, which might serve to undermine the reasonable expectations of negotiating partners. This has traditionally arisen in the context of actions which might serve to undermine the reasonable expectations of negotiating partners. This has traditionally arisen in the context of actions which might undermine the value of negotiated tariff concessions. In our view, this is a further development of the principle of pacta sunt servandaâ€¦The principle of pacta sunt servanda is expressed in Article 26 of the Vienna Convention in the following manner: It is fairly clear from the history of disputes prior to the conclusion of the Uruguay Round that such a requirement was never established and there is no evidence in the current treaty text that such a requirement was newly imposed. Rather, the affirmative proof should be that measures have been taken that frustrate the object and purpose of the treaty and the reasonably expected benefits that flow therefrom.

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## 3: Dispute settlement in the World Trade Organization - Wikipedia

*5 An analysis of the use of good faith in the WTO jurisprudence shows the enormously widespread and varied use of that concept and implies that basically all reports, of the panels and the Appellate Body, have referred to good faith in one way or another.*

This principle, at once a general principle of law and a general principle of international law, controls the exercise of rights by states. An abusive exercise by a Member of its own treaty right thus results in a breach of the treaty rights of the other Members and, as well, a violation of the treaty obligation of the Member so acting. This is another specific manifestation of the principle of good faith which, we have pointed out, is at once a general principle of law and a principle of general international law. This pervasive principle requires both complaining and responding Members to comply with the requirements of the DSU and related requirements in other covered agreements in good faith. By good faith compliance, complaining Members accord to the responding Members the full measure of protection and opportunity to defend, contemplated by the letter and spirit of the procedural rules. The same principle of good faith requires that responding Members seasonably and promptly bring claimed procedural deficiencies to the attention of the complaining Member, and to the DSB or the Panel, so that corrections, if needed, can be made to resolve disputes. The procedural rules of WTO dispute settlement are designed to promote, not the development of litigation techniques, but simply the fair, prompt and effective resolution of trade disputes. It follows that WTO Members cannot improperly withhold arguments from competent authorities with a view to raising those arguments later before a panel. We see this provision as another detailed expression of the principle of good faith, which is, at once, a general principle of law and a principle of general international law, that informs the provisions of the Anti-Dumping Agreement, as well as the other covered agreements. This organic principle of good faith, in this particular context, restrains investigating authorities from imposing on exporters burdens which, in the circumstances, are not reasonable. The requirements of good faith, due process and orderly procedure dictate that objections, especially those of such potential significance, should be explicitly raised. Only in this way will the Panel, the other party to the dispute, and the third parties, understand that a specific objection has been raised, and have an adequate opportunity to address and respond to it. In assessing the good faith efforts made by the United States, the Panel stated that: The United States is a demandeur in this field and given its scientific, diplomatic and financial means, it is reasonable to expect rather more than less from that Member in terms of serious good faith efforts. Indeed, the capacity of persuasion of the United States is illustrated by the successful negotiation of the Inter-American Convention. And, always in dispute settlement, every Member of the WTO must assume the good faith of every other Member. Nothing, however, in the covered agreements supports the conclusion that simply because a WTO Member is found to have violated a substantive treaty provision, it has therefore not acted in good faith. In our view, it would be necessary to prove more than mere violation to support such a conclusion. These provisions require Members to act in good faith with respect to the initiation of a dispute and in their conduct during [] dispute settlement proceedings. However, the presumption of good faith attaches to the actor, but not to the action itself. Thus, whilst the presumption of good faith concerns the reasons for which a Member acts, such a presumption does not answer the question whether the measure taken by the implementing Member has indeed brought about substantive compliance. When a disagreement arises as to whether the implementing measure achieves substantive compliance and whether the suspension of concessions may continue, it should be submitted for adjudication in dispute settlement proceedings. This, however, is not the case.

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## 4: Non-Violation Complaints Part III â€“ WTO & â€œGood Faithâ€•

*Insights into good faith in WTO law are not only important for trade law professionals. Current applications and future operations of the principle are likely to be of strategic value for answering the increasingly pressing question of how WTO law and other international agreements ought to be reconciled.*

Advanced Search Abstract The purpose of the article is two-fold: It attempts to define the framework within which a suitable concept for the application of good faith must be found and explores the conclusion that thus far the Appellate Body has applied good faith with the necessary caution. However, it cautions the necessity of avoiding an overbroad use of the concept and mandates the requirement for the judicial bodies to articulate more clearly the content attributed to the concept in a particular case and the legal consequences thereof than it has done thus far. Finally this article urges the judicial bodies to avoid the idea of an abstract obligation of good faith that adds something to the obligation under the WTO Agreements. This would accord with the traditional international law understanding of what the application of the good faith principle implies. Known since the Roman times, it continues to exist â€" although to a varied extent â€" in essentially all legal orders, domestic and international, 1 including the WTO. On the international level, the principle is included most fundamentally in Article 2 2 of the Charter of the United Nations, 2 but also in such different international conventions as the UN Convention on the Law of the Sea 3 and the UN Convention on the Sales of Goods. In WTO law, good faith is a term that plays an important role on different levels and under many different names. Equally as broad as this principle is the scope of the legal problems that can potentially arise in connection with the application of the good faith concept in the WTO legal order. The scope of this article is too limited to address all of them in depth and also to pay particular attention to the special features of the TRIPS Agreement which directly addresses private parties and their acting in good faith. The article therefore starts with an overview of the use of good faith in the jurisprudence of the WTO panels and the Appellate Body section I and then conducts a risk assessment trying to analyze the legal and policy issues at stake section II. This overview will facilitate the analysis in section II of the article on the risks and difficulties coming with the use of good faith. Probably it was just meant to be another expression of the understanding that the WTO is no self-contained regime but an open system within the international legal order. In several decisions, the panel and the Appellate Body have held that good faith is to be presumed; 19 this corresponds to the traditional understanding of good faith in general international law. A defending party invoking, for example, the exception of Article XX GATT would still have to establish a prima facie case of justification, but not more, before the burden of proof shifts to the complainant. This is the area in which the Members most frequently cite the principle of good faith. What standard it imposes, may be clarified by a dissenting opinion of the judges Lauterpacht, Ko and Spender to a judgment of the International Court of Justice in  The panels and the Appellate Body have used the principle of good faith in several cases for the interpretation of the WTO agreements as foreseen in Article 31 of the Vienna Convention on the Law of the Treaties. However, the reference to this principle did not change the result found after applying the other interpretation criteria of Article 31, i. Nor has the Appellate Body ever made clear what standard it really envisions imposed by the requirement of good faith interpretation. Rather, the good faith notion was used to confirm the found interpretation. In its India â€" Patents Report, it harshly criticized the panel for misinterpreting Article 31 of the Vienna Convention and misunderstanding the concept of legitimate expectations in the context of the interpretation rules in international law. Frequently referring to effet utile interpretation, its jurisprudence has certainly brought some consequences for EC law that the negotiating Members never foresaw at the time the treaty was negotiated. Good faith as a principle guiding the application of WTO law 1. The link to the Vienna Convention As for substantive obligations in the application of WTO law based on good faith, there is no such clear link to the principles of international law as there is in Article 3. However, the WTO jurisprudence, in an obviously broader understanding of the link between WTO and general public international law, has also applied good faith frequently in this context. Sometimes, but not always, reference was made to Article 26 of the Vienna Convention. The following overview is not exhaustive, but illustrative of the breadth of obligations

based on good faith in the context of the WTO Dispute Settlement System. The requirement of good faith is explicitly mentioned twice in the DSU. It obliges the parties in Article 3. The panels and the Appellate Body ruled in several cases on the concrete procedural obligations arising for the Members from these provisions. With regard to Article 3. This pervasive principle requires both complaining and responding Members to comply with the requirements of the DSU [. By good faith compliance, complaining Members accord to the responding Members the full measure of protection and opportunity to defend, contemplated by the letter and spirit of the procedural rules. The same principle of good faith requires that responding Members seasonably and promptly bring claimed procedural deficiencies to the attention of the complaining Member, and to the DSB or the Panel, so that corrections, if needed, can be made to resolve disputes. The procedural rules of WTO dispute settlement are designed to promote, not the development of litigation techniques, but simply the fair, prompt and effective resolution of trade disputes. As has been mentioned, the link corresponds to the broad understanding of the obligations arising under the heading of good faith in Article 3. Only briefly should the estoppel principle be considered as neither its link with good faith nor its role in the WTO jurisprudence is clearly established. Two cases may illustrate briefly the interaction between both concepts in the context of the Dispute Settlement System. In the Argentina â€" Poultry case, Argentina argued a violation of both principles, good faith and estoppel, by Brazil in bringing the case under the DSU after having lost the identical case under the Mercosur dispute settlement system. According to the European Communities, the alleged violations would have been manifest upon the conclusion of the WTO agreement, but the complainants had never raised the issues. As has been shown in connection with certain provisions of the DSU, the Appellate Body and the panels consider several of the substantive provisions of the WTO Agreements to be expressions of good faith as well. The most prominent explicit reference to the principle of good faith is that of the Appellate Body in the Shrimp-Turtle case. Here, the Appellate Body held: The chapeau of Article XX is, in fact, but one expression of the principle of good faith. This principle, at once a general principle of law and a general principle of international law, controls the exercise of rights by states. Such references include, evidently, the general principle of pacta sunt servanda , the heading of Article 26 of the Vienna Convention. In the Article In particular, the discretion must be exercised in an even-handed way that is fair to all parties affected by an anti-dumping investigation. The link, however, has been made by others: It is interesting in this context, for example, to take a brief look at the European legal order. The European Court of Justice had decided as early as that the principle of legitimate expectation formed part of the Community legal order, and hence that failure to respect a legitimate expectation would be considered a breach of the treaty that could lead to an infringement procedure. The principle of good faith [. That principle is the corollary in public international law of the principle of protection of legitimate expectations, which forms part of the Community legal order and on which any economic operator to whom an institution has given justified hopes may rely. The provisions of the GATT and therefore also the protection of legitimate expectations refer to the Members, while the EU principle, as part of a legal order with direct effect on the citizens, protects the legitimate expectations of private parties, i. These expectations may not be represented in the words of the treaty to the same extent as the legitimate expectations of the Member States. On the side of substantive obligations, the relevant panel report was the Korea â€" Government Procurement case. It considered this principle to be customary international law and held that on its basis a non-violation complaint could be justified. In the case, however, the US did not provide sufficient evidence. In the decisions on the Byrd Amendment , the panel and the Appellate Body have been considered by some observers to go one step further. This term was defined as those who were petitioners or interested parties in support of the petition being the basis of the order. The complainants, 11 Members, claimed, amongst other allegations, a violation of Article 5. Conversely, the Appellate Body held that there was not enough evidence to support the assumption that the US had not acted in good faith. As such evidence was missing in the case, the panel erred in automatically assuming a violation of good faith. In its report, the Panel abandoned the approach used thus far that good faith must have an expression within the text of the agreements. Still, there are two possible interpretations of what the Panel actually did:

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*The panel used a slightly modified good faith standard.8() The requirement of good faith interpretation has been called a 'core principle of interpretation of the WTO Agreements'. and the analysis of the WTO jurisprudence with regard to its references to good faith in one or the other form is proof of this difficulty. includes the.*

## 6: Good Faith in the Jurisprudence of the WTO : Marion Panizzon :

*What does the concept of good faith express? This book is the first to discuss what good faith means in international trade law. As a reference guide for scholars and practitioners it analyses the case law of WTO dispute settlement practice.*

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